IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25088 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHANASMA NAGRIK SAHAKARI BANK LTD. - Petitioner(s)
Versus
DHRUV CO.OPERATIVE CREDIT SOCIETIES LTD. & 3 - Respondent(s)

==========

Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 4.
MR BM PATEL for Respondent(s) : 1 - 2.
MR PRASHANT MANKAD, AGP. for Respondent(s) : 3 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 20/02/2007

ORAL JUDGMENT

1 On 5.12.2006 the following order was made by the Court when the Rule came to be issued.

"1. The learned advocate for the petitioner seeks permission to amend the cause title and join the Registrar, Co-operative Societies, Gujarat State, as respondent No.3 and District Registrar as respondent No.4. Permission granted. Amendment to be carried out immediately.

2. Heard Mr.P.K.Jani, learned advocate for the petitioner and Mr.B.M.Patel, respondent No.2, appearing on Caveat as party in person for the respondents.

3. The petition challenges Notice dated 29th March, 2006 and Japti Warrant and Notice dated 5th June, 2006 (Annexure-L Colly.). According to the petitioner, provisions of Section 159 of the Gujarat Co-operative Societies Act, 1961 (the Act) cannot be applied in the facts of the case and hence, the impugned Notice as well as consequential Warrant are illegal. As against that respondent No.2 has submitted that the exercise of powers under Section 159 of the Act is correct and justified.

4. The facts are not in dispute. One Shri Ganpatbhai Chaturbhai Patel had an account in the petitioner Bank and , a sum of Rs.4,15,000/- came to be deposited in the said account with the petitioner Bank which appears to have been given as a loan by respondent No.1- Credit Society.

5. That the said Ganpatbhai Chaturbhai Patel had issued post dated cheques to secure the debt which came to be dishonoured because of stop payment instructions. Admittedly, respondent No.1 herein initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (The Securitisation Act) against which the petitioner preferred Special Civil Application No.601 of 2005. Vide Judgment dated 08.08.2006, this Court has recorded as under in paragraph No.5 of the Judgment.

5. *"Having heard the learned advocates appearing for the parties, I find that respondent No.3 has initiated action which is wholly impermissible and unauthorized. Admittedly, there was no agreement between the respondent No.3 and petitioner-Bank. The petitioner-Bank had not offered any of its properties as its security to cover and debt of respondent No.5. When respondent No.3 was giving the money to the respondent No.5 on loan, the petitioner-Bank was no were in picture. Incidentally, if respondent No.5 gave post dated cheques to respondent No.3 drawn on the petitioner-bank to cover the debt through that transaction by itself by no stretch of imagination the petitioner-bank is liable, so far as respondent No.3 is concerned. Looked from any angle, respondent No.3 had no authority to proceed against the petitioner-Bank under the provisions of the said Act.*

6. The petition came to be allowed quashing and setting aside various Notices issued by respondent No.1 herein. It is stated by respondent No.2 that against the said Judgment, Letters Patent Appeal has been preferred and the same is pending.

7. On a plain reading of Section 159 of the Act, it is apparent that the power to recover certain sums by attachment and sale of property can be exercised only to recover;

(a) Any amount due under a decree or order of a Civil Court obtained by a Society.
(b) Any amount due under a decision, award or order of the Registrar etc.
(c) Any sum awarded by way of costs under this Act.
(d) Any sum ordered to be paid under the Act as contribution to the assets of the Society.

8. Even if, one proceeds on the footing, though that is yet to be established by the respondents, that any amount as such is due and payable by the petitioner to the respondents, admittedly prima-facie, none of the

conditions stipulated by the aforesaid four clauses of Section 159 of the Act appear to be satisfied.

9. Hence, Rule.

10. Interim relief in terms of paragraph No.10(B).

11. Respondent No.3 Registrar is directed to have the Books of Account of respondent No.1-Society audited by way of special audit for financial years 2004-2005 and 2005-2006 and place the reports of the Auditor on record. The auditor shall specifically report as to whether the petitioner bank has availed of any loan as claimed from respondent No.1- Society, or is in any other manner indebted to respondent No.1- Society.

12. To be listed on 23th January, 2007."

2 Thereafter, the matter was being adjourned from time to time to grant time to the District Registrar to comply with the directions made by this Court in order dated 5.12.2006.

3 Today when the matter is taken-up for hearing the learned Assistant Government Pleader places on record a copy of the special audit report dated 14.2.2007 made by the auditor appointed by the District Registrar. After narrating various facts it has been specifically found in paragraph No.7 of the report of the auditor that the respondent-society viz., Dhruv Co-operative Credit Society Ltd. does not have any account in the petitioner

bank but there are individual accounts in the name of one Shri Ganpatbhai Chaturbhai and Shri Vishalbhai B.Patel; that so far as the petitioner bank is concerned there are no financial transactions whatsoever with respondent No.1-Cooperative Society.

4 Once the auditor appointed under directions of this Court, has, after examining books and records of respondent No.1 – Society, come to the conclusion that factually there are no financial transactions at any point of time between the petitioner bank and respondent No.1 – Credit Society there can be no question of respondent No.2 exercising any powers under Section 159 of the Act. Not only none of the conditions stipulated by the said provisions are shown to be satisfied, but no amount as such is due and payable by the petitioner to the respondents. It is apparent that respondent No.2 has been initiating various proceedings from time to time against the petitioner bank for reasons best known to the said respondent, but admittedly have no relevance in so far as the factual matrix is concerned. The moment it is found that respondent No.1 – Cooperative Society does not have any right to recover any sum, in absence of any

financial transactions between the parties, respondent No.2 as Recovery Officer could not have exercised any such powers for recovery of non-existent liability.

5 In the result, the petition is allowed. Rule made absolute. Considering the fact that the petitioner bank has been forced to litigate only at the behest of respondent No.2, who has personally appeared in the matter, respondent No.2 is directed to pay costs of this petition quantified at a sum of Rs.1500/- out of his own pocket.

(D.A. Mehta, J)

m.m.bhatt.